

Corie L. Miller
ID#:285961/SBI#:190197C
New Jersey State Prison
PO Box 861
Trenton, New Jersey 08625-0861

FILED
JUL 28 2009
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Case No. _____

_____	:	
CORIE L. MILLER,	:	<u>CIVIL ACTION</u>
	:	
Plaintiff,	:	COMPLAINT PURSUANT TO
	:	5 U.S.C. § 552(a)(4)(B)
v.	:	
UNITED STATES DEPARTMENT OF	:	Case: 1:09-cv-01393
JUSTICE,	:	Assigned To: Leon, Richard J.
Defendant.	:	Assign. Date: 7/28/2009
_____	:	Description: FOIA/Privacy Act

Plaintiff Alleges:

I.

This is an action for a preliminary and permanent injunction enjoining the withholding, and ordering the disclosure, of information sought by Plaintiff. Jurisdiction is predicated on the Freedom of Information Act, Title 5, Section 552(a)(4)(B) of the United States Code.

II.

Plaintiff is a United States citizen residing at New Jersey State Prison, PO Box 861, Trenton, New Jersey 08625-0861.

III.

Defendant is the United States Department of Justice.

IV.

On August 10, 2006, Plaintiff requested from defendant, pursuant to the Freedom of Information Act, or 5 U.S.C. § 552, the following items:

- (1) Initial and subsequent correspondences from the Passaic County Sheriff's Department [specifically from Sheriff William Nativio] to agent John Massey, requesting FBI analysis of single latent fingerprint believed to have belonged to the Plaintiff.

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Clerk, U.S. District and
Bankruptcy Courts

(2) Any correspondence from the Passaic County Prosecutor's Office and agent Massey's responses to any of these correspondences; copies of latent fingerprint lifts believed to have been made by the Plaintiff during the commission of an alleged state-law murder; copies of any fingerprint evidence concerning Plaintiff, submitted by the State of New Jersey, or any law-enforcement agency operating under color of state-law, for agent Massey's examination and analysis.

(3) Agent Massey's Official Report of conclusions and determinations regarding his analysis of the aforementioned fingerprint evidence; and any photographs, tapes, or other miscellaneous items or documents regarding Plaintiff which may exist in any file compiled by agent and fingerprint-specialist John Massey.

[See Exhibit A, Plaintiff's Exhibits]

V.

Defendant denied Plaintiff's request on February 16, 2007. [Exhibit B] Following denial of Plaintiff's request, Plaintiff appealed to Defendant's Office of Information and Privacy. [Exhibit C] The appeal was denied on July 9, 07. [Exhibit D]

VI.

Plaintiff has exhausted all of his administrative remedies available under existing FOIA procedures for disclosure of the requested information.


WHEREFORE, Plaintiff prays:

1. That the Court issue a preliminary and permanent injunction directing defendant to cease withholding any information regarding fingerprint analysis of Plaintiff by Defendant;
2. That the Court issue an order directing Defendant to furnish to Plaintiff forthwith a verified copy of the entire file regarding fingerprint analysis of Plaintiff, or all portions thereof subject to permissive or mandatory disclosure;
3. That, in the alternative, Defendant be required to furnish such report to the Court for an in camera inspection for the Court's determination as to whether portions of the requested documents may be exempt from public disclosure, and that after such in camera inspection, the Court direct Defendant to furnish

to Plaintiff a copy of the entire report, or all portions thereof subject to permissive or mandatory disclosure;

4. That the Court grant Plaintiff such other and further relief to which he may be entitled.

Dated June 17, 2009


CORIE L. MILLER
ID#:285961/SBI#:190197C
New Jersey State Prison
PO Box 861
Trenton, NJ 08625-0861

Mr. Corie L. Miller
ID# 285961/ SBI# 190197C
New Jersey State Prison
Third & Federal Streets
PO Box 861
Trenton, NJ 08625-0861

10 August 2006

Freedom of Information Officer
Federal Bureau of Investigation
9th Street & Pennsylvania Avenue N.W.
Washington, D.C. 20535

Dear Sir/Madame,

Please accept this letter-request in lieu of a more formal request for specific government records under the Freedom Of Information Act (5 U.S.C. § 552) and Privacy Act of 1974 (5 U.S.C. § 552(a)). I intend to make my request as reasonably descriptive as possible.

On September 12, 1996, FBI agent John Massey, a fingerprint specialist, testified for the State of New Jersey at my criminal jury-trial. I would like to request all the information compiled by agent Massey with respect to requests by the State of New Jersey for analysis of latent fingerprint evidence of myself. This includes, but is not limited to, the following:

1.) Initial and subsequent correspondence from the Passaic County Sheriff's Department--specifically from sheriff officer William Nativo--to agent Massey requesting the analysis;

2.) Any correspondence from the Passaic County Prosecutor's Office and agent Massey's responses to any of these correspondences; copies of latent fingerprint lifts concerning Corie Miller; copies of any fingerprint evidence concerning Corie Miller submitted by the State of New Jersey for agent Massey's examination.

3.) Agent Massey's official report of his conclusions and determinations regarding his analysis of the aforementioned fingerprint evidence; and any photograph's, tapes, or other miscellaneous papers or documents regarding Corie Miller which exist in any file compiled by agent/fingerprint-specialist John Massey.

Exhibit A

IDENTITY VERIFICATION

As verification of my identity, I offer the following information:

1. My place and date of birth is Barnert Hospital, Paterson, New Jersey, 13 February 1978.
2. My Social Security Number is 156-66-5444.
3. Prior to my incarceration, I resided at 640 American Legion Drive, Teaneck, NJ, Apartment M.
4. My full name is Corie Leevon Miller.

I swear under penalty of perjury that the foregoing information is true and correct.

DATED:

SIGNED


Corie L. Miller



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 16, 2007

MR CORIE LEEVON MILLER
**285961/SBI 190197C
NEW JERSEY STATE PRISON
THIRD AND FEDERAL STREETS
POST OFFICE BOX 861
TRENTON, NJ 08625 0861

Request No.: 1062093- 000
Subject: MILLER, CORIE LEEVON

Dear Requester:

This is in reference to your Freedom of Information-Privacy Acts (FOIPA) request for information pertaining to the above subject.

The material you requested is located in an investigative file which is exempt from disclosure pursuant to Title 5, United States Code, Section 552, subsection (b)(7)(A). For an explanation of this exemption see enclosed Form OPCA-16a. Please note if this file is reviewed under FOIPA in the future, additional exemptions may be applied at that time.

You may appeal this denial by writing to the Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C., 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may easily be identified.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Ex. B

CORIE LEEVON MILLER
SS No. 285961, SBI No. 190197C
West Compound, Two Right
New Jersey State Prison
3rd & Federal Streets
Post Office Box 861
Trenton, N.J. 08626-0861

FREEDOM OF INFORMATION APPEAL

26 February 2007

OFFICE OF INFORMATION and PRIVACY
United States Department of Justice
1425 New York Ave., NW
Suite 11050
Washington, D.C. 20530-0001

Re: Request No: 1062093-000
Subject: MILLER, CORIE LEEVON

Dear Reader:

Please accept this letter in lieu of a more formal submission, Appellant Corie Leevon Miller's appeal of the FBI's decision of 16 February 2007, denying his request for finger-print documents which pertain to a previous State-prosecution in which he had been a defendant. The background information follows.

On or about 10 August 2006, Appellant requested the above mentioned information under the provisions of the Freedom of Information-Privacy Acts. See, FOIP Request from Corie Leevon Miller to Freedom of Information Officer, dated 10 August 2006, attached hereto as Ex. A. In response, on 16 February 2007, one David M. Hardy, Section Chief of the Record/Information Dissemination Section, Records Management Division, denied the request on the basis that, "[t]he material you requested is located in an investigative file which is exempt from disclosure pursuant to Title 5, United States Code, Section 552, subsection (b)(7)(A)". See, letter-correspondence from David M. Hardy to Corie Leevon Miller dated 16 February 2007, attached hereto as Ex. B. Closer scrutiny reveals that denying Appellant's request on the basis of this provision is inappropriate in light of the described materials requested. See generally, Ex. A.

According to Title 5, U.S.C.A. Section 522(b), exemption 7(A) authorizes the withholding of "records of information compiled for law enforcement purposes, [yet] only to the extent that the production of such law enforcement records or information (A) could be reasonably expected to interfere with enforcement proceedings." To fit within exemption 7(A), the government must show that (1) a law enforcement proceeding is pending or prospective, and (2) release of the information could reasonably be expected to cause some articulable harm.

Exhibit C

OFFICE OF INFORMATION and PRIVACY
United States Department of Justice
Re: Request No: 1062093-000
Subject: MILLER, CORIE LEEVON
26 February 2007
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The application of a 7(A) exemption was unreasonable. As the FOIP Request make clear, Appellant's jury trial unfolded in the State of New Jersey during September of 1996. That, as part of the State's presentation of it's evidentiary proofs, testimony was adduced from Agent John Massey who was qualified at trial as an FBI Finger-print Specialist. The State indictment then pending against Appellant at that juncture did not involve any violations of federal law, neither civil or criminal. In this regard, there was never any per se "investigation" of Appellant by the FBI.

Moreover, Agent Massey had testified at a county trial on the request of the Passaic County Prosecutor's Office. Neither the State judicial proceeding, nor the county prosecutor's office, were an agency of the federal government. Agent Massey had initially become involved in the State proceedings when he was contacted by the Passaic County Sheriff's Department for the purpose of performing an analysis upon a latent finger-print that was lifted from the crime scene.*

Given the circumstances for which Agent Massey had become involved in a State prosecution against Appellant for violations of State criminal law, it can not be said that Appellant had been under, or is now the subject of, an investigation by the FBI. There simply is no "pending" federal prosecution against Appellant, nor any active or passive law enforcement proceedings that are anticipated by the federal government. nor, are there any prospective law enforcement proceedings imminent. The federal record agency's application of exemption 7(A) is, quite frankly, less than sincere and unfounded based upon the facts of this matter. Any federal agency suggestion of a current investigation of Appellant (whether State or Federal) would be a suggestion made in bad faith.

As a matter of law, the Third Circuit Court of Appeals has held that:

"[t]he usual rationales given for [applying Exemption 7(A)] is the danger of witness intimidation, the witness' desire to maintain confidentiality, and concern that premature disclosure would create a chilling effect on potential witnesses and dry up sources of information."

See, Grasso v. IRS, 785 F.2d 70, 76 (3d Cir. 1986)(citing J.P. Stevens & Co., Inc. v. Perry, 710 F.2d 136, 143 (4th Cir. 1983)).

* As a result of Agent Massey's examination, the Passaic County Prosecutor's Office maintained at trial and through the testimony of Agent Massey, that the finger-print had belonged to that of Appellant.

OFFICE OF INFORMATION and PRIVACY
United States Department of Justice
Re: Request No: 1062093-000
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26 February 2007
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Thus, to the extent that there are no pending or prospective law enforcement proceedings against Appellant; and to the extent that release of the requested information could not reasonably be expected to cause any articulable harm, Appellant respectfully requests that this Office exercise its statutory supervisory authority and reverse the decision of the Section Chief denying Appellant's FOIP request and Order that requested materials be provided to Appellant in all respects consistent with the initial FOIP Request.

Respectfully submitted,

A handwritten signature in cursive script that reads "Corie L. Miller". The signature is written in dark ink and is positioned above a horizontal line.

CORIE LEEVON MILLER
REQUESTER-APPELLANT

CLM:jjbiv:b

Attachments: Ex. A - Initial FOIP Request dated 10 August 2006
Ex. B - Denial of FOIP Request dated 16 February 2007



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

JUL 09 2007

Mr. Corie Leevon Miller
SS No. 190197C/SBI No. 190197C
New Jersey State Prison
Post Office Box 861
Trenton, NJ 08625-0861

Re: Appeal No. 07-0890
Request No. 1062093
MJS:CL

Dear Mr. Miller:

You appealed from the action of the Headquarters Office of the Federal Bureau of Investigation on your request for access to records pertaining to the analysis of fingerprint evidence against you performed by the FBI.

After carefully considering your appeal, I am affirming the FBI's action on your request. The FBI properly withheld certain records because they are protected from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. § 552(b)(7)(A). This provision concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings. Please be advised that 5 U.S.C. § 552(b)(7)(A) protects information gathered for state and local law enforcement investigations as well as information gathered for federal investigations.

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Janice Galli McLeod".

Janice Galli McLeod
Associate Director

Exhibit D